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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re M.L., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

MELINDA C.,

Defendant and Appellant.

G051625

(Super. Ct. No. DP022164)

O P I N I O N

Appeal from orders of the Superior Court of Orange County, Dennis J.
Keough, Judge. Affirmed.

Donna P. Chirco, under appointment by the Court of Appeal, for Defendant
and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio
Torre, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

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Melinda C., the mother of the minor M.L., contends the juvenile court abused its discretion in denying her petition under Welfare and Institutions Code, section 388. (All further statutory references are to the Welfare and Institutions Code.) The order mother unsuccessfully challenged was the juvenile court's order setting a hearing under section 366.26. In this appeal, mother contends she demonstrated changed circumstances and that the minor's best interests would have been served had the juvenile court granted the modification she requested under section 388. We do not find the juvenile court abused its discretion in finding that, while mother might be in the midst of changing her ways, she has not supplied evidence she changed them yet. We affirm the orders.

I

FACTS

This is the second time this court has issued an opinion involving the mother. In *Melinda C. v. Superior Court* (May 13, 2015, G051618) [nonpub. opn.], involving the minor's half sibling, A.C., the mother contended substantial evidence did not support the juvenile court's order to remove A.C. from her custody and set a hearing to terminate her parental rights pursuant to section 366.26. A.C. was born in 2012 with a positive toxicology screen for amphetamine and methamphetamine. The facts in our prior opinion include the following statements: "A dependency petition filed on behalf of the minor's half sibling M.L. was sustained in 2009 because petitioner 'created an endangering home environment for the child in that excessive pornographic materials, including videos and magazines belonging to the maternal grandfather, were found in the child's home. . . .' Petitioner 'has an unresolved history of substance abuse and is an abuser of methamphetamine. . . .' Petitioner and [the minor's] father Marc L. have a history of 'domestic violence in the child's presence. . . .' After family reunification in the case involving [the minor] was terminated in 2011, the juvenile court ordered a guardianship and permanent placement services for [the minor]." This court denied the

mother's petition for writ of mandate challenging the juvenile court's order setting a hearing under section 366.26 regarding A.C.

The minor was born in 2002. She was declared a dependent of the Los Angeles County Juvenile Court on February 3, 2010. On August 16, 2011, the Los Angeles Juvenile Court conducted a hearing pursuant to section 366.26, and Mr. and Mrs. C. were granted guardianship over the minor on September 30, 2011. "On December 15, 2011, Los Angeles County Juvenile Court ordered proceedings transferred to Orange County based on 'legal guardian resides in Orange County.'" On May 4, 2012, the Orange County Juvenile Court ordered minor "declared a dependent child of Orange County Juvenile Court."

In an August 15, 2012 status report, the Orange County Social Services Agency (SSA) reported: "The child's mother has been granted two supervised visits per month with the child. The caretaker reported that she allows the child's mother to visit the child at the placement whenever the mother wants, provided that the child's mother schedules the visit at a reasonable time and with enough notice. The child's mother has not requested a visit with the child at all since Orange County Juvenile Court accepted jurisdiction over the case. The child's mother did call the child one time; however, the child's mother called the child after the child's bedtime and the child was asleep."

In September 2012, Mr. C. contacted SSA to say the minor's maternal aunt and maternal grandmother had moved from the home of the maternal grandfather, and the minor wanted to live with her family. He further informed SSA that it was never Mr. and Mrs. C.'s intention to keep the minor from her family.

Thus, SSA scheduled a meeting to discuss whether or not the legal guardianship granted to Mr. and Mrs. C. should be set aside. At the meeting on September 20, 2012 were Mr. and Mrs. C., the minor's maternal aunt and maternal grandmother, the social worker and a facilitator. No resolution was reached, and after the meeting, the social worker reported to the court: "The undersigned has concerns about

the child being placed with her maternal relatives” SSA recommended that all existing orders remain in place. Afterward, Mr. and Mrs. C. expressed ambivalence about setting the guardianship aside “as they do not want the child to end up in the foster system.”

In a February 14, 2013 report, SSA stated the mother calls the minor periodically, but the calls were only about once a month. SSA also reported: “The child’s mother has only visited the child once, despite having weekend passes from the facility where she lives and despite visiting her younger daughter on those weekends.” With regard to other maternal relatives, SSA states in the same report: “Since expressing a desire to have the child placed with them, the child’s maternal aunt . . . and the maternal grandmother . . . have only visited the child twice and have not called her. In fact, the legal guardian reported that although the child was invited to one birthday party on the maternal relatives’ side of the family which she attended, the child was not invited to two other birthday parties the family has had.” Additionally, SSA requested the maternal relatives complete a Livescan, prepared the paperwork for them and explained the process to them, but they never followed through.

On February 15, 2013, the juvenile court found the permanent plan of legal guardianship was appropriate and ordered it to be continued. But due to Mr. and Mrs. C.’s desire to set aside their legal guardianship, SSA explored other family members who were not part of the maternal family. The minor’s paternal grandmother expressed willingness to take custody of the minor, and the minor said she wished to live with her. Mrs. C. reported the paternal grandmother was visiting the minor once a week, and calling her once or twice a week.

An August 8, 2013 SSA report states the mother did telephone the minor as well, but Mrs. C. terminated it when the mother told the minor she was going to have a new daddy and wanted the minor to speak with her current boyfriend. The mother also

visited the minor in July 2013, and the minor enjoyed her visit, “and wished her mother would visit more often.”

The paternal grandmother expressed interest in adopting the minor. SSA stated in its report: “The undersigned has been transitioning the child to living with her paternal grandmother with extended 3-4 day visits. The legal guardians stated that they support the placement with the paternal grandmother as she seems to care and love the child. Reportedly, the child enjoys her time with her grandmother and there were no concerns. The undersigned plans to place the child immediately with her paternal grandmother once Court grants setting aside guardianship.”

With regard to the minor’s half sibling, A.C.’s paternal grandmother telephoned SSA on August 12, 2013 and “expressed concern that the mother is struggling financially and may not be able to support and raise [A.C.] as [A.C.’s paternal grandmother] needs to buy the child diapers and wipes. Reportedly, the mother becomes really depressed at times and cannot get out of bed.”

Meanwhile, the minor reported she was happy living with her paternal grandmother. The paternal grandmother also reported she was happy with the minor, and that she enrolled her in a nearby school.

The mother was permitted more frequent and unmonitored visitation with the minor, but because she took the child to see the maternal grandfather, SSA once again reduced the number of visits and required they be monitored. On one occasion, the mother asked the minor to return birthday and Christmas presents she had given her.

The mother missed her drug tests on January 31, 2014, and on March 19, 2014, the paternal grandmother reported the mother only visited the minor once in February.

On August 8, 2013, the juvenile court dissolved the guardianship, and granted SSA’s request to place the minor with her paternal grandmother. SSA recommended to the court that the permanent plan was no longer appropriate, and

requested that a hearing under section 366.26 be scheduled. On September 23, 2013, the juvenile court set a hearing under section 366.26 for October 23, 2013. The hearing was continued many times and did not commence until January 21, 2014.

During a pre-adoption physical examination of the paternal grandmother in April 2014, she found out she has throat cancer. After the paternal grandmother's throat cancer was discovered, SSA recommended a 60-day trial visit of the minor with the mother, and the court authorized that visit on May 6, 2014. The visit commenced on June 10, 2014. On June 30, 2014, SSA attempted an unannounced visit to see the minor at the mother's home, but no one answered the door. A relative reported the minor was with the maternal grandmother, which was in the same home the child had previously been removed from due to the presence of pornographic materials.

On May 9, 2014, the mother's therapist reported the mother completed seven sessions of therapy, but the therapist had seen no progress in that "the mother is argumentative and sometimes falls asleep during session." On May 13, 2014, the minor had a home visit with the mother for Mother's Day, but the minor later reported she was left with her mother's friend while the mother went to a nightclub.

The mother missed two drug tests in June 2014 and tested positive for methamphetamines on a third drug test. Thus, in July 2014, half sibling A.C. was removed from the mother's home. And, SSA found the mother had failed the trial 60-day test visit with the minor, and the minor was returned to the paternal grandmother.

SSA reported to the court in July 2014 the paternal grandmother was unable to either adopt or become the minor's guardian. SSA's recommendation to the court was: "[R]emoval of the child from the physical custody of the relative would be detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative. It is further recommended that the Court order that the child remain in long-term foster care."

Meanwhile, during an August 2014 visit between the mother and the minor, the mother informed the child she wanted to hang herself. It does not appear this incident of inappropriate behavior was a fluke. The previous April, the minor reported the mother and her sister engaged in arguments in front of the minor, and the minor's Mother's Day visit was disrupted when the mother left the child with a friend while she went to a nightclub. The previous December and January, the mother made the child cry on several occasions. During the summer of 2013, as noted above, the mother tried to have the minor speak with her latest boyfriend on the telephone. In July 2014, one of the mother's arguments with her sister resulted in a physical altercation. In December 2014, in a pizza restaurant, the mother was on the telephone for one hour and 15 minutes, ignoring the minor. Minor's half sibling A.C.'s paternal grandmother reported that when the minor was 10 years old, the mother told her, "if I have to live without you I'm going to kill myself."

Section 388 Motion

On March 2, 2015, the mother filed a motion under section 388, requesting the juvenile court to change its order to conduct a hearing under section 366.26. In an attached declaration, the mother declared: "Since my relapse in July, 2014, I have committed myself to my sobriety and acknowledge the mistakes I have made. I have maintained my sobriety for nearly 7 months now." "I am requesting return of my daughter to my care because I am ready, willing and able to accept full responsibility for my daughter's care." Attached to the motion are numerous certificates of completion of various programs.

With regard to whether or not the mother made a sufficient prima facie showing to warrant a hearing of her section 388 motion, the court stated: "I believe mother has shown a change of circumstances and has argued best interests in her [section] 388 [motion]." Thereafter, the juvenile court ordered that the evidence for both

the hearing on the section 388 motion and the section 366.26 proceedings would be heard and considered at the same time.

After hearing several days of testimony and receiving numerous exhibits, the juvenile court concluded, based on clear and convincing evidence the minor's placement is necessary and appropriate, that it is likely the minor will be adopted, that the provisions of section 366.26, subdivisions (c)(1)(A) and (B)(i)(ii)(iii) and (iv) do not apply. The juvenile court stated the child looks to her paternal grandmother for a sense of security, and that circumstances are changing, "rather than changed," and denied the section 388 motion. Regarding the section 366.26 hearing, the court ordered that parental rights be terminated, the minor be placed for adoption, and that the minor and half sibling A.C. not be placed together.

II

DISCUSSION

The mother's brief contains only one issue: "The Juvenile Court Abused its Discretion in Denying Mother's Section 388 Petition Where She Demonstrated Changed Circumstances, And Where [the Minor's] Best Interests Would Have Been Served By Granting the Modification." County counsel argues: "Mother spent almost her entire adult life battling drug addiction, and her short stint of sobriety prior to the hearing could not constitute meaningfully changed circumstances."

"A juvenile court order may be changed, modified or set aside under section 388" if there is new evidence or changed circumstances, and the proposed changed order is in the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) The grant or denial of a section 388 motion is reviewed for abuse of discretion, and will not be disturbed unless it amounts to an arbitrary, capricious or patently absurd determination. (*In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.) After reunification services are terminated, the court's focus shifts to the best interests of the child. (*In re Stephanie M.* (1994) 7 Cal.4th 295.)

Here, there was evidence the mother began using illegal drugs when she was a teenager. As we stated in our previous opinion, half sibling A.C. was born with drugs in her system when mother was 37 years old. As noted above, the next year, the mother missed drug tests and tested positive for methamphetamine shortly after the minor began a home visit with her. “Children should not be required to wait until their parents grow up.” (*In re Rikki D.* (1991) 227 Cal.App.3d 1624, 1632.)¹ As to the best interests of the minor, the juvenile court found the child looks to her paternal grandmother for a sense of security. The minor called her mother “dumb,” and described the mother’s actions as “crazy.” We conclude the orders of the juvenile court are supported by substantial evidence and do not indicate any abuse of discretion.

III

DISPOSITION

The orders denying mother’s section 388 motion and thereafter terminating her parental rights are affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

THOMPSON, J.

¹ *In re Rikki D.*, *supra*, 227 Cal.App.3d 1624, was disapproved by *In re Jesusa V.* (2004) 32 Cal.4th 588, 598, on the issue of whether a biological father’s presence was necessary for a dependency adjudication. The dicta about children not having the time to wait for parents to grow up, however, was untouched.